

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ALVERENE BUTLER,)	
)	
Plaintiff,)	
v.)	
)	CASE NO. 2:06-cv-00278-MEF-CSC
ALABAMA DEPARTMENT OF)	
TRANSPORTATION, <i>et al.</i>,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO STRIKE

COME NOW Defendants, the Alabama Department of Transportation, Joe McInnes, Patrick Todd Jackson, and Mark T. Waits, and file this motion to strike certain documents and portions of documents submitted contemporaneously with Plaintiff's Response to the Defendants' Motion for Summary Judgment (Doc. No. 29). In particular, Defendants move to strike portions of the affidavits of Melvin Wynn (Doc. No. 29, Exhibit 3) and Kelvin Johnson (Doc. No. 29, Exhibit 4) as well as certain other documents thus submitted. As grounds for this motion, Defendants would advise the Court as follows:

1. Defendants have filed their Motion for Summary Judgment (Doc. No. 25), Memorandum Brief (Doc. No. 26), and Evidentiary Submission (Doc. No. 27) in the above-styled cause.
2. Plaintiff has responded to the Defendants' Motion for Summary Judgment by filing Plaintiff's Response to the Defendants' Motion or Summary Judgment (Doc No. 29).
3. Plaintiff's Response includes the affidavits of Melvin Wynn and Kelvin Johnson. The Response also includes a number of evidentiary submissions.

4. Rule 56 of the Federal Rules of Civil Procedure contemplates the use of affidavits in conjunction with motions for summary judgment and the responses thereto.

5. Affidavits which fail to meet the requirements of Rule 56 are subject to motions to strike. *Gore v. GTE South, Inc.*, 917 F.Supp. 1564 (M.D. Ala. 1996).

6. In filing a motion to strike, the movant should state precisely the portions of the affidavit to which objection is being made and the grounds for said objections. *Gore v. GTE South, Inc.*, *supra*. Defendants' Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment, filed contemporaneously herewith, sets forth the portions of the affidavits which are objectionable and the grounds for said objections.

7. Also subject to a motion to strike are document submissions that are irrelevant, inadmissible, and conclusory. Also to be excluded are documents containing hearsay and factually unsupported statements and that are more prejudicial than probative. *Hill v. Oil Dri Corp. of Georgia*, 198 Fed. Appx. 852 (11th Cir 2006). (*Hill, supra*, is an unpublished opinion. Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority).

8. Defendants' Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment sets forth the documents which are objectionable and the grounds for said objections.

WHEREFORE, PREMISES CONSIDERED, Defendants, for the reasons set forth in Defendants Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment, contend that their motion to strike is due to be granted.

RESPECTFULLY SUBMITTED
TROY KING
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that, on **March 6, 2007**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECT system, which will send notification to the following:

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